

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3883 of 1984

Date of decision: 26-7-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JAGDISH R. DESAI

Versus

DISTRICT DEVELOPMENT OFFICER

Appearance:

MR MO JOSHI for Petitioner
Mr. N. N. Pandya for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 26/07/96

The petitioner, an employee of the Bharuch District Panchayat, filed this special civil application challenging the order passed by the Gujarat Civil Services Tribunal, Gandhinagar, on 11-1-1984 in Appeal No.100 of 1982. The facts of the case, briefly stated, are that the petitioner was prematurely retired under order dated 23rd December, 1975 passed by the District Development Officer, Bharuch. This order of premature retirement has been challenged by the petitioner by filing appeal No.100 of 1982 before the Gujarat Civil Services Tribunal at Gandhinagar. The appeal of the petitioner was allowed by the Tribunal and the order of the District Development Officer dated 23rd December, 1975 was set aside. Grievance has been made by the petitioner against the order of the Tribunal whereby direction has been given for fixing his salary notionally in the cadre of Senior Clerk as if he had continued in service and had not retired from service prematurely before the normal date of superannuation, and accordingly his pension and gratuity should be revised and arrears of pension and gratuity should be paid to him with effect from the date of his normal retirement on superannuation.

2. Learned counsel for the petitioner contended that once the order of compulsory retirement of the petitioner was found to be illegal and the same has been set aside by the Tribunal, then passing of the aforesaid order would amount to giving penalty to the petitioner. Denial of actual benefits to the petitioner for the period from 23rd December, 1975 to the date on which he would have attained superannuation is a penalty, which has resulted in heavy monetary loss to the petitioner. Learned counsel for the respondents is unable to give out any justification for passing the order by the Tribunal denying monetary benefits to the petitioner from the date of premature retirement till he reached the age of superannuation.

3. I have given my thoughtful consideration to the submission made by the learned counsel for the petitioner. Once the order of premature retirement was held to be illegal, then the petitioner should have been given all the consequential benefits. The Tribunal has committed serious illegality in passing the order giving the petitioner only notional benefits. Such an order could not have been passed by the Tribunal and it has no support from any provision of any Act or Rules. It is not the case that the petitioner has been found guilty of

misconduct or that any punishment had been given to him. It is a case where premature retirement of the petitioner was made and once that order is found to be illegal, then the petitioner should be given all the consequential benefits in actual terms and not notionally. The order of the Tribunal to that extent cannot be allowed to stand. Otherwise also the Tribunal has failed to give out any reasons for denying the benefits, after setting the order of premature retirement.

4. In the result this special civil application is allowed. The order of the Gujarat Civil Services Tribunal dated 11-1-1984 produced at annexure -B to the petition so far as it set asides the order of premature retirement of the petitioner is maintained, but that part of the order which directs notional fixation of pay of the petitioner in the cadre of Senior Clerk is set aside. It is declared that the petitioner shall be entitled to all the benefits as a consequence of quashing and setting aside of the order of premature retirement. The respondent is directed to determine the amount of arrears of salary and other benefits payable to the petitioner, including the amount of periodical increments, from the date of premature retirement till the date on which he would have attained the age of superannuation, and also the amount of pension and gratuity payable to him on that basis, within a period of three months from the date of receipt of certified copy of this order. The amount of arrears of fixation of pay, pension and gratuity as aforesaid shall be paid to the petitioner within a period of three months thereafter. Rule made absolute accordingly. No order as to costs.

.....

csm